

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on)	WC Docket No. 05-337
Universal Service)	
)	CC Docket No. 96-45
High-Cost Universal Service Support)	
Federal-State Joint Board on Universal)	
Service)	
)	

**COMMENTS OF MAINE PUBLIC UTILITIES COMMISSION, CONNECTME
AUTHORITY, WYOMING PUBLIC SERVICE COMMISSION, AND VERMONT
DEPARTMENT OF PUBLIC SERVICE**

The Maine Public Utilities Commission (MPUC), the ConnectME Authority , the Wyoming Public Service Commission and the Vermont Department of Public Service (Commenters) hereby submit these comments in response to the Federal Communications Commission's (FCC or Commission) *Notice of Proposed Rulemaking (NPRM)*,¹ released January 29, 2008, regarding ways to reform the high-cost universal service program. Specifically, the FCC seeks comment regarding the recommendation of the Federal-State Joint Board on Universal Service (Joint Board) involving comprehensive reform of the high-cost universal service support mechanisms.

I. SUMMARY

On November 20, 2007, the Federal-State Joint Board on Universal Service issued a Recommended Decision (Recommended Decision). The Commenters strongly support most portions of the Recommended Decision of the Joint Board. However, we believe a greater

¹ *Federal State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-4 (Fed.-State Jt. Bd., rel. Nov. 20, 2007) (*Recommended Decision*).

funding commitment is required to support the ubiquitous broadband deployment
envisioned by the Joint Board.

The key to reforming universal service involves the elimination of the identical support rule. We strongly agree with the Joint Board's recommendation that the Commission should eliminate the identical support rule.

II. IDENTICAL SUPPORT RULE

One key element of reforming universal service involves the elimination of the identical support rule. The identical support rule has resulted in the support of multiple voice networks in many areas due to increased support provided to competitive eligible telecommunications carriers (ETCs). This has greatly increased the size of the high-cost fund without resulting in significant expansion of service. Competitive ETCs receive high-cost support based on the per-line support that the incumbent telecommunications carriers receive rather than on the competitive ETC's own costs. Support for competitive ETCs has risen to approximately \$1 billion per year. The Commenters believe it is no longer in the public interest to use federal universal service support to either subsidize competition or to build duplicate networks in high-cost areas. We agree with the Joint Board's recommendation that the Commission should eliminate the identical support rule.² The Joint Board's experience has shown that the amount of support given to competitive ETCs has proven to have almost nothing to do with the facilities competitive ETCs have built in most rural and other high-cost areas of the country. (Recommended Decision, pg. 18, paragraph 35.)

III. THREE SEPARATE FUNDS SHOULD BE CREATED

We strongly agree with the Joint Board's recommendation that the concept of

² Our endorsement for ending the equal support rule is contingent upon the creation of a mobility support fund. We do not wish to create a situation whereby existing support for mobile carriers is eliminated without replacing that support with a mobility fund.

universal service be expanded to include universal availability of mobility services, broadband Internet services, and voice services at affordable and comparable rates for all rural and non-rural areas. To this end, we believe support should be provided through three separate funding mechanisms, each with separate distribution and funding methods. The Broadband Fund would be used primarily to subsidize the construction of facilities for new broadband services in unserved or inadequately served areas of the country. Similarly, the Mobility Fund would be used primarily to expand wireless mobile voice services to unserved or inadequately served areas. The Provider of Last Resort (POLR) Fund would support wireline carriers who currently serve as the POLR. The POLR Fund would eventually cease when terrestrial broadband service is available everywhere.

These three funds would need to be funded separately and adequately to meet the sufficiency requirements of 47 U.S.C. § 152(b)(3). Existing universal service programs should be migrated quickly to this new three-part funding structure. Eliminating the identical support rule will provide some of the funding needed to meet these goals, but is likely that significant additional support will be necessary. The Joint Board's experience has shown that the amount of support given to competitive ETCs has proven to have almost nothing to do with the facilities competitive ETCs have built in most rural and other high-cost areas of the country. (Recommended Decision, pg. 18, paragraph 35.)

The three-fund approach should eliminate much of the current duplication of support since it will provide support to only one wireline, one wireless, and one broadband provider in any given geographic area. The areas and entities that will receive Broadband Fund and Mobility Fund support are likely to differ from the areas and entities that will receive POLR support because of the differing cost characteristics and methods of providing mobility and broadband service.

The Joint Board recommends that the Mobility and Broadband Funds provide support for operation and maintenance costs, in addition to facility cost support, for a limited period of time in most areas. Some very remote areas will require support continuously in order to be able to cover the high costs of service. We agree with these recommendations

1. The Broadband Fund

The Broadband Fund should be used primarily for supporting broadband Internet services in unserved areas. The support should primarily take the form of grants for the construction of new facilities for those unserved areas. Grants for new construction should also be able to be used to improve broadband service in areas with substandard service. As a condition of receiving grants, the Commission should require that any towers constructed for wireless broadband providers with Broadband Fund support be made available for use by all providers of wireless voice and data services. The Broadband fund also should provide continuing operating subsidies to broadband Internet providers serving areas where low customer density would preclude the practical provision of broadband service, even after receiving a construction subsidy.

We agree with the Joint Board's finding that developing the Broadband Fund will require a detailed knowledge of the areas in which quality wireline broadband service is unavailable. The job of collecting information on areas without broadband or where broadband service is substandard will be complex, time consuming, and difficult. Broadband availability can and does, vary significantly by state and within states. In order to effectively use federal funds to expand broadband deployment through new construction grants, it is essential that the entity responsible for dispensing the funds have access to detailed, current geographic availability data and mapping. The MPUC has suggested

some of the data that will be required in Maine's comments in WV Docket No. 07-38. As we stated in our comments, we believe the states are generally more capable of developing accurate data, in large part because they are more familiar with local geographic challenges and have more sources of information about local needs. Several states have already assembled data approaching or exceeding the required level of accuracy.³

For these reasons, we also agree with the Joint Board's findings that the states are better suited than the Commission to effectively administer the new Broadband Fund grant program. Therefore, we recommend that the Broadband Fund grants first be allocated to the states,⁴ and then be awarded by a

³ E.g., Kentucky (www.connectkentucky.org), Wyoming (<http://cio.state.wy.us/telecom/Broadband/TopicIndex.pdf>).

⁴ States may be required to provide full or partial matching funding.

designated state agency to finance particular construction projects or the operations of broadband providers.⁵ The grant to the states should be made subject to federal accountability rules.

Broadband funds should be allocated to the states according to the number of customer locations in each state that are unable to purchase terrestrial broadband Internet service at their location, as well as the total cost of building broadband service for the entire state. A cost proxy model could be used to develop national and state-by-state broadband costs. We suggest an approach which would allow minimally sufficient support without matching funds, but would increase support in those states that provide a match. Broadband Fund grants made by the states should be limited to only one provider in any given geographic area. The states should be encouraged to use a variety of methods for awarding grants to best minimize costs while providing quality service. Those methods should include but not be limited to reverse auctions, proxy models, and the use of Request for Proposal (RFPs).

2. The Mobility Fund

The majority of Mobility Fund support should be provided as subsidies to be used for the construction of towers and other equipment to provide wireless voice service in unserved areas. Towers funded with mobility support should be made available to all telecommunications and wireless broadband providers since they will be built with public funds. The Mobility Fund can also be used to provide continuing operating subsidies to carriers serving areas where service is essential but where usage or population density is so thin that carriers would be unable to provide service without a subsidy. While unserved

⁵ Some states may be unwilling or unable to assume this responsibility. In that event, the Commission would directly administer the grants.

areas should be easily identifiable, areas that are underserved, with mobility services that are spotty and not reliable, may be more difficult to identify. We agree that universal service funding to upgrade all existing wireless networks in the rural areas should not be a goal. However, all consumers should have access to at least one entity that provides a reliable signal. To achieve this result, we

recommend the Commission use a portion of the Mobility Fund to improve wireless service in both under-served and unserved areas.

We agree with the Joint Board that the states should be partners with the Commission in administering Mobility Fund awards just as they have been involved with ETC determinations to date. State agencies are much more likely than the Commission to be able to assemble and evaluate the data needed to make these grants efficient and effective. The allocation of Mobility Fund resources to states should be based on a formula which includes a factor that considers the geographic area where residents cannot receive reliable wireless service. The formula should also include each state's unserved mileage along state and federal highways and take into account the facilities that will be necessary to provide ubiquitous service by assigning extra weight for hard to serve areas such as those that have extremely low population density⁶, are hilly, mountainous or roadless. The lack of roads greatly increases costs in remote and insular areas. Availability of wireless services in these remote areas is important because wireless service are increasingly used to call emergency services and 911.

States should award Mobility Fund dollars in a manner similar to Broadband Fund awards. Funding should be awarded on a project-by-project basis and the states should be permitted to award Mobility Fund grants to only one provider in any geographic area even though the towers built may be used by more than one provider. As for the Broadband Fund, we suggest an approach which would allow minimally sufficient support without matching funds, but would increase support in those states that provide a match.

⁶ Wyoming, at 5.3 people per square mile, is the second least densely populated state. Nearly 40% of Wyoming's population is concentrated in three of twenty-three counties. Six counties with a combined area of 24,433 square miles, average only 1.79 people per square mile.

3. The Provider of Last Resort Fund

The Joint Board did not design a new and unified system for Providers of Last Resort (POLR). They did not reach an agreement on what specific changes to the legacy support mechanisms that today provide support for incumbent local exchange carriers (ILECs) need to be made. The Board's recommendations were more general.

The Joint Board recommended that the Commission establish a process and a timetable under which it will review and modernize the existing high-cost mechanisms for rural and non-rural carriers, with the objective of developing a unified system that can be applied to all incumbent carriers until the loop support program is phased out and replaced entirely by a broadband and mobility support mechanism. We agree with that proposal and believe that work on it should begin immediately.

We recommend that the POLR Fund subsume all of the existing ILEC support mechanisms. Except for the possible funding reductions discussed below, these programs would be left intact but phased out quickly after the Broadband Fund is implemented and broadband service is built out to all areas.

We believe the Commission should focus its attention on quickly developing a unified POLR mechanism. The present support mechanisms are very different in both design and support amounts for rural and non-rural carriers. The support for customers served by rural carriers is in most cases much greater than for comparably situated customers served by a non-rural carrier. The existing rules also freeze support upon sale of an exchange⁷ which perpetuates the rural, non-rural inequality. Support should not depend on the identity or parentage of the ILEC.

⁷ See 47 C.F.R. § 54.305.

The current support mechanisms also do not include all costs necessary for service delivery. For rural carriers, support is primarily for high loop costs and is not based on high switching costs, and does not include transport costs. Failure to support high transport costs provides insufficient support for very high cost transport carriers who currently receive support for some of those costs from the NECA pool. Using loop, switching, and trunk costs will make inter-carrier compensation reform

much easier. High loop, switch and trunk costs should not be individually supported. Only those carriers in areas where the sum of all the cost components used to provide service is high should be supported.

We agree with the Joint Board that the current wireline mechanism also needs to be reformed in other ways. New entrants often compete only in densely populated areas that have relatively low costs, making it much more difficult for ILECs to charge the same rates in both their low-cost densely populated areas and their higher cost, more remote areas. None of the existing support mechanisms recognize this problem. Furthermore, most of the existing mechanisms were introduced before local exchange competition became a reality, and do not appropriately adjust support to minimize the financial impact of line losses on remaining customers. Finally, the freeze on total loop cost support has caused problems for those carriers whose loop costs are high but are not increasing as the average High Cost Loop has increased. Under the current total cap, the support has decreased over time for carriers whose investment have remained relatively stable.

IV. SIZE OF THE FUND

The Joint Board recommended an overall cap on high-cost funding. Even though the Joint Board recognized that legitimate public purposes require federal funding, it was unwilling to recommend any significant changes in the share of the entire USF devoted to high-cost support or to increase the fund size. We strongly disagree with the Joint Board about the size of the new fund. We believe that more thorough study will demonstrate that it is too low.⁸

The size of the Fund has been an issue for the Commission for some time now. In its *First Remand Order*, the FCC determined that the non-rural high-cost fund must be “only as large as necessary.”⁹ The Tenth Circuit, however, held that the FCC had failed to appropriately consider the range of principles in 47 U.S.C. § 254(b).¹⁰ Although the Tenth Circuit expressed concern about gratuitous subsidies, that observation was a criticism of *excessive* support, not an argument against *sufficient* support.¹¹ The Tenth Circuit stopped far short of encouraging the FCC to find that the sufficiency requirement conflicted with the affordability principle. It did not suggest that the requirement to provide sufficient support is balanced by notions of affordability. Section 254(d)-(e) obligates the FCC to provide sufficient support, and no concept of “excessive subsidization” can undermine that duty.

⁸ See *NPRM* ¶¶ 9-11.

⁹ See *First Remand Order*, *CC Docket No. 96-45* (Oct. 27, 2003) at ¶ 30.

¹⁰ See *Qwest Communications International, Inc. v. FCC* 398 F.3d 1222, 1234 (10th Circuit, 2005) (*Qwest II*).

¹¹ See *Qwest II* at 1234 citing *Qwest I* at 1200 (“as we explained in our previous decision, excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in § 254(b)(1). The FCC is compelled to balance the § 254(b) principles to the extent they conflict”).

The Joint Board recommended imposing a cap on the total amount of high-cost funding at \$4.5 billion, which is approximately the same as the 2007 level of high-cost funding. The Joint Board made these recommendations, despite the fact that it also recommended supporting broadband and mobile service in addition to landline based service. The Joint Board stated that it finds that many areas of government operate within a budget, and they think that high-cost funding can do the same. That portion of the Joint Board decision ignores the sufficiently requirements of 47 U.S.C. § 152(b)(3) and *Qwest I*¹² and *II*.

While we do not oppose a cap in principle, at the very least, the initial fund budget must be supported by sound facts and be sufficient to fund the reformed system. An appropriate cap can only be determined on the basis of a record developed in contemplation of the reformed system. We do not believe a sufficient record exists to determine the size of either the Mobility Fund or the Broadband Fund. Certainly limiting those funds to the existing fund size without any further analysis would be arbitrary. The Joint Board decision also fails to establish a recommended broadband standard. The guiding funding principle should be to provide sufficient support for the mobility and broadband service so that the services can be provided in most all rural areas at a level that is comparable in availability and price to services available in urban areas. It is critical that principles set forth by the Tenth Circuit regarding

¹² *Qwest Corporation v. FCC*, 258 F.3d 1191 (10th Cir. 2001) (*Qwest I*).

sufficiency be applied here. The same standard needs to be applied to the broadband standard in order for it to be lawful under 47 U.S.C. § 254(b)(3).

We recommend that the Commission engage the services of the National Regulatory Research Institute (NRRI) to work with the Commission and states to develop a broadband comparability standard and perform the analysis necessary to develop a funding level which meets the comparability standards of 47 U.S.C. § 254(b)(3). After that analysis is done, the Commission should conduct a rulemaking to receive comments on the findings of the State-NRRI-Commission analysis regarding the national broadband standard and on the funding levels that are required to meet that standard.

This Commission also must determine what “reasonably comparable” means pursuant to the remand of its decision to *Qwest II*.¹³ The Commission has yet to issue an order responding to the Tenth Circuit Court of Appeals’ decision in *Qwest II*. It has now been over three years since the Court directed the Commission to revise key elements of its non-rural carrier high cost commenter support rules so that sufficient support would be provided to non-rural carriers. Consumers in rural states have been waiting too long for the Commission to correct its misinterpretation of the statute and provide sufficient support to those states. A legal finding as to what constitutes “reasonably comparable” rates and service and what constitutes “sufficient” support must be made before the Commission proceeds to make the functional and legal findings necessary to implement the Joint Board recommendation.

We hope the Commission acts expeditiously to begin reforming its universal service rules.

¹³ See 47 U.S.C. § 254(b)(3).

Respectfully Submitted,

By:

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On Behalf of the
Maine Public Utilities Commission
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